IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY 26TH MARCH 2007/5TH CHAITHRA 1929

WP(C).No. 18107 of 2006(E)

PETITIONER:
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1. JOY.M.M.,MAPPILAKUNNEL HOUSE,
KUNNAKAL P.O., VALAKOM.

2. VARKEY OUSEPH,S/O.VARKEY VARKEY,
AGED 78 YEARS, VALAKATTU,
KUNAKAL P.O., VALAKOM.

3. SKANA OUSEPH, VALAKATTU HOUSE,
KUNNAKAL P.O.,VALAKOM.

4. SANTHOSH P.K.,PADINYAREKUDIYIL,
KUNNAKAL P.O., VALAKOM.

BY ADV. SRI.T.RAJESH

RESPONDENTS:
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1. THE STATE OF KERALA REPRESENTED BY
THE SECRETARY, LOCAL ADMINISTRATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. TRIBUNAL FOR THE LOCAL SELF GOVERNMENT
INSTITUTIONS,THIRUVANANTHAPURAM.

3. VALAKOM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
VALAKOM.

4. THE KERALA STATE POLLUTION CONTROL BOARD
REPRESENTED BY THE CHIEF ENVIRONMENTAL ENGINEER,
GANDHI NAGAR, ERNAKULAM.

5. M.PRABASH,CHAKKALAYI,
KUNNACKAL P.O., VALAKOM.

BY ADV. SRI.K.S.BABU
SMT.K.K.THULASI BAI, SC, POLLUTION CONTROL BOARD
GOVT.PLEADER SRI.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/03/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 18107 APPENDIX

Petitioner's Exhibits

Ext.P1: The true copy of the representation dated 16-7-2004 submitted by the residents of the locality

Ext.P2: The true copy of the license application submitted by the 5th respondent before the 3rd respondent dated nil

Ext.P3: The true copy of the representation submitted dated 18-10-2004

Ext.P4: The true copy of the consent No.PCB/EKM/AC/F/23/2005 issued by the 4th respondnent dated 23-02-2005

Ext.P5: The true copy of the sketch produced by the 5th respondent for obtaining Ext.P4 dated nil

Ext.P6: The true copy of the resolution No. II (1) of the Panchayath Committee dated 10-3-2005.

Ext.P7: The true copy of the Decision to reject the application was communicated to the 5th respondent by the 3rd respondent dated 18-3-2005.

Ext.P8: The true copy of the order dated 10-6-2005 in Appeal 106 of 2005

Ext.P9: The true copy of the resolution No.1 dated 22-7-2005

Ext.P10: The true copy of the order in Appeal No.604 of 2005 of the Tribunal dated 5-11-2005

Ext.P11: The true copy of the report report of the Panchayat Sub-Committee dated nil

Ext.P12: The true copy of the resolution No.1 dated 26-12-2005

Ext.P13: The true copy of the order in Appeal 46 of 2006 dated 26-5-2006

Ext.P14: The true copy of the Agreement dated 2-11-2005 executed Between the owner of property and Sabu for cutting the rubber trees

Ext.P15: Photographs showing Crusher unit and the rubber trees.

Respondent's Exhibits

Ext.R5(a) ; The true Photostat copy of the proceedings dated 23-2-2005 issued by the 4th respondent to the 5th respondent

Ext.R5(b): The true Photostat copy f the consent renewal order dated 15-2-2006 issued by the 4th respondent to the 5th respondent

Ext.R5(c) The true Photostat copy of the proceedings dated 18-3-2005 of the 3rd respondent

Ext.R5(d): The true Photostat copy of decision No.1 dated 26-12-2005 of the 3rd respondent

Ext.R5(e) : The true Photostat copy of the memorandum of appeal filed by the 5th respondent dated 26-1-2006

Ext.R5(f): The true Photostat copy of the commission report

Ext.R5(g): The order of the Tribunal in Appeal No.46/2006 dated 26-5-2006

Ext.R5(h): The photograph of the Metal Crusher Unit

Ext.R5(i): The negative of the photograph

Ext.R5(j): The true Photostat copy of page No.33 of the voters list of Legislative Assembly Constituency Muvattupuzha

Ext.R5(k): The true Photostat copy of page No.21 of the voters list of Legislative Assembly Constituency, Muvattupuzha

Ext.R5(l) : The true Photostat copy of the proceedings dated 11-1-1993 of the District Labour Officer

Ext.R5(m): The true Photostat copy of the license issued by the Valakom Grama Panchayath to the 3rd respondent on 1-8-1996

Ext: R5(n) : The true Photostat copy of the Receipt No.33330 dated 9-10-1997 issued by the 3rd respondent to the 5th respondent

Ext.R5(o) : The Photostat copy of the Receipt No.60008 dated 28-10-1998 issued by the 3rd respondent Panchayath towards the license fee and professional tax for the period 1998-1999

Ext.R5(p) The true Photostat copy of the proceeding dated 21-12-1992 of the Grama Panchayath

Ext.R5(q) The Photostat copy of the letter dated 20-12-2004 issued by the Secretary Valakom Grama Panchayath to the 5th respondent

Annexure -R4(a): True copy of the Consent Renewal Order bearing No.PCB/CHN/AC 103/04 dated 15-02-2006

Annexure -R4(b): True copy of the direction bearing No.PCB/CHN/AC 103/04 dated 10-8-2006 issued by the Board

//True Copy//

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PIUS.C.KURIAKOSE .J

W.P.(C) No. 18107 of 2006

Dated this the 26th day of March 2007

JUDGMENT

The petitioners who are residents of Ward No. 8 of the 3rd respondent Valakom Panchayath are aggrieved by Ext.P13 order of the Tribunal for Local Self Government Institutions under which the Tribunal has directed the Panchayath to issue licence to the 5th respondent for the conduct of a crusher unit. The petitioners submit that though the area where they are presently residing was a barren area prior to 1999, the same has now become a thickly populated residential area. In the year 2004 It was noticed that a metal crusher unit started functioning upon the property owned by one Mr. Sukumaran. The unit was functioning flouting all procedural formalities and statutory requirements. The petitioners were informed by the owner of the land and by the officials of the Panchayth that previously licence had been granted for the functioning of a small crusher unit which had been abandoned from 1998. It is under the guise of reviving the abandoned unit that in 2004 the 5th respondent has started functioning of the unit again. Since the functioning of the unit caused considerable nuisance due to the profuse quantities of dust emanated apart from sound pollution resulting from vibrations, was causing health hazards to the residents of the locality. Ext.P1 representation dated 16-7-2004 was submitted before

the 3rd respondent Panchayath. But even as the complaint was pending the 5th respondent submitted Ext.P2 application dated 30-7-2004 for licence without even producing consent letter from the owner of the property .

2. The petitioners submit that even after Ext.P2 was under consideration by the Panchayat the 5th respondent continued to operate the crusher unit without licence and therefore Ext.P3 representation dated 18.10.2004 was submitted by the local residents before the Panchayat. pursuant to Ext.P3 an enquiry was conducted by the third respondent and stop memo was issued to the 5th respondent. But the 5th respondent who has clout with the officials succeeded in obtaining a consent to operate from the 4th respondent, the Kerala State Pollution Control Board. Ext.P4 is the copy of the aforesaid consent. Ext.P5 is copy of the sketch which was produced by the 5th respondent for obtaining Ext.P4 consent. The petitioners allege that Ext.P5 does not depict the real state of affairs since more than five residential houses actually existing were left out in the sketch. The petitioners point out that there are several conditions in Ext.P4 such as planting of trees and curtain plants as a green belt in the boundaries of the property, installation of dust suppression system with water sprays while are incapable of being complied with by the 5th respondent. The third respondent-Panchayat by its resolution Ext.P6 dated 10.3.2005 decided to

decline the licence application. The said decision was communicated to the 5th respondent by Ext.P7 communication. Ext.P6 resolution was challenged by the 5th respondent before the Tribunal for Local Self Government Institutions. The Tribunal by Ext.P8 order dated 10.6.2005 set aside Ext.P6 and directed the Panchayat to take a fresh decision giving opportunity of hearing to the 5th respondent. The petitioners point out that pursuant to Ext.P8 a Subject Committee was constituted by the Panchayat consisting of four members conducted a hearing and found that Ext.P4 consent had been issued without considering the density of residential houses in the area and that Ext.P5 sketch does not reveal the real state of affairs. Accordingly, the Panchayat Committee passed Ext.P9 resolution dated 22.7.2005 deciding to decline consent. The petitioners submit that Ext.P9 will show that there are 8 residential houses within prohibited limits and that Ext.P9 was a correct decision. Challenging Ext.P9 the 5th respondent once again approached the 2nd respondent Tribunal. The Tribunal passed Ext.P10 order setting aside the Panchayat's decision and directing reconsideration of the application submitted by the 5th respondent by the Panchayat Committee. The petitioners submit that pursuant to Ext.P10 the Panchayat Sub Committee visited the area and found that the 5th respondent has not complied with any of the specifications mentioned in Ext.P4. Ext.P11 is copy of the report of that Sub Committee and after receiving Ext.P11 the Panchayat Committee

took Ext.P12 decision on 26.12.2005 to reject the application for licence once again on the reason that none of the conditions prescribed in Ext.P4 were satisfied.

3. The 5th respondent approached the Tribunal once again challenging Ext.P12. The Tribunal by order dated 26.5.2006 set aside Ext.P12 decision and directed the third respondent to issue licence to the 5th respondent within 30 days from 26.5.2006. Ext.P13 is copy of the order of the Tribunal. The petitioners submit that the Tribunal has taken into account report of an Advocate Commissioner to the effect that there are curtain plants and trees around the proposed unit. The petitioners point that the extent of the property is only 40 cents and that the property has no accessible public road. An agreement has already been executed between the owner of the property and one Sabu for cutting and removal of the rubber trees standing on the property. Ext.P14 is copy of that agreement dated 2.11.2005. Ext.P15 is photograph to show the crusher unit and the rubber trees standing nearby. The petitioners allege that the crusher unit is situated in a densely populated area where there are number of residential houses, schools etc. The Tribunal did not consider any of these aspects or hear any of the affected parties before issuing positive direction as regards grant of licence. Challenging the Tribunal's order as ultra vires, its powers under Rule 18 of the Kerala Local Self Government Tribunal Rules and on

various other grounds, the petitioners pray that Ext.P13 order of the Tribunal and Ext.P4 consent of the Pollution Control Board be quashed.

4. The third respondent-Panchayat has filed a counter affidavit. It is stated therein that the Panchayat refused to issue licence to the 5th respondent since the Sub Committee appointed for inspecting and reporting on the crusher unit reported that the operation of the unit will create air and water pollution to the people of that locality. The Sub Committee had also found that the applicant had not complied with the conditions imposed by the Pollution Control Board satisfactorily. Ext.P9 was issued by the Panchayat considering all the aspects of the matter. The Pollution Control Board has not taken into consideration the density of population before issuing Ext.P4 consent. The Panchayat Committee believes that the 5th respondent's unit will create air and sound pollution.

5. The Pollution Control Board has submitted a report. Annexure R4(a) is the consent renewal order dated 15.2.2006 renewing the consent issued to the 5th respondent up to 31.12.2008. It is stated that in Annexure R4(a) ten conditions were insisted and if the condition which is insisted under condition No.4 of Annexure R4(a) is followed, then there will be no chance for pollution. Annexure R4(a) was issued on the basis of the inspection of the unit conducted on 1.2.2006. It is pointed out that since the unit was not under operation for a long time, maintenance was poor and that

was why four months time was granted in Annexure R4(a) for completing the maintenance works on the pollution control measures. It is stated that a further inspection was conducted on 10.8.2006 in the unit of the 5th respondent for assessing the present stage of functioning. But that time was also the unit was not functioning. Under the above circumstances on the basis of the latest inspection conducted on 10.8.2006 the 5th respondent was instructed not to operate the unit without ensuring the performance of all pollution control measures properly and without providing prior intimation to the Board. Annexure R4(b) dated 10.8.2006 is copy of the directions so issued by the Pollution Control Board to the 5th respondent.

6. A detailed counter affidavit has been submitted by the 5th respondent who alleges that the Writ Petition has been filed with the oblique motive of seeing that the 5th respondent is not able to operate his metal crusher unit at all. The income derived from the unit is the only means of livelihood for the 5th respondent who had invested substantial amounts for establishing the unit which is a small scale industry in the property owned by his brother-in-law, Sri.Sukumaran. The unit started in the year 1992. The licence issued by the Panchayat expired on 31.3.1999 and the 5th respondent applied for renewal of licence. In fact even after the expiry of the period of licence, the unit continued to function. On receiving the licence renewal application the Panchayat directed the 5th respondent to produce No

Objection Certificate from the Pollution Control Board. It was accordingly that the 5th respondent approached the Pollution Control Board and obtained consent of the Pollution Control Board who conducted a detailed enquiry in the matter. Ext.R5(a) dated 23.2.2005 is copy of the proceedings of the Pollution Control Board and Ext.R5(b) dated 15.2.2006 is copy of the consent to operate the unit. In Ext.R5(a) 12 conditions were imposed on the 5th respondent. All the conditions were complied with by the 5th respondent. The only objection raised by the Panchayat was that he had not obtained the consent of the Pollution Control Board. But when the consent issued by the Pollution Control Board was produced, the Panchayat rejected the application for renewal of licence vide Ext.R5(c) proceedings dated 18.3.2005. Against Ext.R5(c) the 5th respondent approached the Tribunal which set aside Ext.R5(c) and directed the Panchayat to take a fresh decision.

7. The Panchayath was directed to take fresh decision taking into consideration the consent granted by the Pollution Control Board and also the report of the Secretary of the Panchayath dated 3-2-2005. Once again on 22-7-2005 the Panchayath rejected the application of the 5th respondent stating that the Pollution control Board issued consent without taking into consideration the density of population in the area and that the sub-committee had found that all the conditions stipulated in the order of the

Pollution Control Board are not satisfied and further the committee is dissatisfied with the functioning of the 5th respondent's unit that it will create nuisance and health hazards for the nearby residents. Since the stand taken by the Panchayath was contrary to its earlier stand the 5th respondent preferred appeal before the 2nd respondent again. The Tribunal allowed that appeal and directed the Panchayath committee to re-consider the 5th respondent's application in the light of the statutory provisions and the consent issued by the Pollution Control Board. The committee of the Panchyath once again issued Ext.R5(d) resolution dated 26-12-2005 turning down the 5th respondent's application against R5(d). The 5th respondent preferred appeal No. 46/2006 before the Tribunal. This time the Tribunal appointed an Advocate Commissioner as per Order in I.A. 161/2006 filed by the 5th respondent. The Advocate Commissioner submitted a detailed report Ext. R5(f) . It will be seen from R5 (f) that the grounds stated by the Panchayahth for rejecting the licence applied for by the 5th respondent are far from truth. Therefore the Tribunal considered the case on merits and issued the impugned order R5(g) (Ext.P13). Justifying R5(g) the 5th respondent submits that the intention of the petitioner is only to see that the 5th respondent will never be able to operate his unit . Some of the members of the 3rd respondent Panchayath are colluding with the petitioners. The 5th respondent claims that he has complied with all the

mandatory requirements under the Pollution Control Board's consent and the unit is ready to comply with the directions contained in R5(b) order dated 15-2-2006. Ext.R5(h) is photograph of the 5th respondent's crusher unit. This photograph shows not only the crusher unit but the surrounding areas . Ext.R5(I) is the corresponding negative. The 5th respondent contends on the basis of R5(h) that no nuisance will be caused due to the operation of his crusher unit.

8. It is specifically contended in the counter affidavit that the first petitioner Sri.M.M. Joy resides one kilometer away from the metal crusher unit. In the year 2005 he purchased residential building together with 20 cents of land owned by one Sri.V.O.Chacko who was the first complainant in Ext.P1 and the 12th complainant in Ext.P3. Sri.V.O.Chacko who sold property to the first petitioner is residing in a rented house in the same ward of the Grama Panchayath. Ext.R5(j) and R5(k) photocopies of the relevant pages of the voter's list of the Moovattupuzha Assembly constituency are relied on . It is submitted that the 3rd petitioner is none other than the son of the 2nd petitioner. The 3rd petitioner and the 2nd petitioner are residing together. It is pointed out that the first petitioner is not residing upon the property, he had purchased from Sri.V.O.Chacko. The first petitioner is a gulf returnee and he purchased that property only for investment purpose. The 4th petitioner also had purchased the property

from Sri.V.O.Chacko himself. It is clear from the conduct of the petitioners that their common interest is only to ensure that the 5th respondent a small scale entrepreneur who invested substantial amounts for establishing his crusher unit will not be able to operate his unit. It is alleged that the writ petition has been filed by the petitioner at the instigation of certain members of the committee of the Panchayath who have been terribly displeased by the specific order of the Tribunal to issue licence to the 5th respondent. It was due to the assistance of the Panchayath that the documents placed on record by the petitioner could be procured by the petitioners and that too immediately after the Tribunal had passed its order. It is pointed out that the 4th petitioner started living in his house in the year 2002 only and that at present nobody resides in the building which has been purchased by the 1st petitioner. The unit was in existence from 1992 onwards and licence was being renewed from time to time . It is claimed that the crushing unit was started on property having an approximate extent of 52 cents and not 40 cents belonging to the Brother-in -law of the 5th respondent. The capacity of the crusher unit has not been increased at any point of time since the 5th respondent will be able to do that only with the consent of the Pollution Control Board and the Panchayath. The 5th respondent never made any attempt to have increase the power supply in respect of collected load from the electricity Board. If there was any nuisance or danger or threat to

the residential building the Pollution Control Board would not have granted R5(c) and R5(e) . The grievance in Ext.P1 was only that the 5th respondent is operating the unit without statutory documents . But importantly during the long period from 1992 till 16-7-2004 nobody objected to the operation of the unit. Ext.P5(l)dated 11-1-1993 is the proceedings of the District Labour Officer Ernakulam informing the Secretary to the employment rehabilitation department that N.O.C can be issued in favour of the 5th respondent for starting the crusher unit. R5(m) is copy of the licence dated 1-8-1996 issued by the Panchayahth to the 5th respondent for conducting metal crusher unit for the period from 2-5-1996 to 31-3-1997. R5(n) is copy of the receipt issued by the Panchayath against payment of the licence fee for the subsequent year. R5(o) is copy the receipted bill payment of licence fee for 1998-99. R5(p) dated 21-12-1992 is the proceedings of the 3rd respondent Grama Panchayath by which the petitioner is permitted to instal the machineries for the metal crusher unit subject to certain conditions. R5(q) is copy of letter dated 20-12-2004 issued by the Panchayath Secretary to the petitioner . R5(q) states that Sri.Chacko Ouseph Walakkattu (the first signatory in Ext.P1) and Lissy ChackoWalakkattu have no residence in Valakom Grama Panchayath. R5(q) states that the 4th petitioner Santhosh P.K completed the construction of his residential building on 22-11-2002 and that the 3rd petitioner's

residential building was completed on 27-3-2003. The counter- affidavit highlights that the 5th respondent's application was not for any fresh licence but was only for renewal of license which had been granted way back in 1992 and was being renewed from time to time. The counter- affidavit goes on to deny all the allegations raised in the writ petition regarding the genuineness of the various certificates and licences obtained by the 5th respondent. The counter- affidavit submits that the sub-committee which was formed by the Panchayath on the basis of Ext.P11 report containing irrelevant and incorrect facts contrary to the Panchayath's own earlier stand. The Tribunal's order is a well reasoned one and the Tribunal was justified in issuing specific direction since the Tribunal was convinced that the Panchayath was harassing the 5th respondent by ignoring Tribunal's earlier orders. Ext.P15 it is contended is totally irrelevant in this case. It is pointed out that the petitioners had not approached the Tribunal at all . Having remained silent while the issue was being fought out between the 5th respondent and the Panchayath before the Tribunal the petitioners are not at all entitled to challenge the order of the Tribunal when the Panchayahth against whom directions are issued by the Tribunal has not choosen to chalenge the Tribunal's order at all.

9. The petitioners have filed reply affidavit reiterating their earlier stand and repudiating the contentions raised by the 5th respondent

and the Pollution Control Board. Along with the reply affidavit, the petitioners have produced Circular No.PCB/TI/17/80 dated 30-4-1998 issued by the Pollution Control Board themselves as Ext.P16. It is pointed out that Ext.P16 circular provides that No Objection Certificate / consent to establish , shall be granted for Stone Crushers only if site suitability criteria are satisfied. Petitioner submit that the 5th respondent's site do not satisfy the site suitability criteria as per Ext.P16.

10. The reply -affidavit contends that R5(a) appeal was filed suppressing material facts and putting forth totally untrue statements and Ext.P5 Commission report does not answer the correct facts through the correct perspectives. The hollowness of the report is clear from the additional conditions which are seen imposed in R5(b). The claim of the 5th respondent that he had complied with all the conditions is totally incorrect and the photographs R5(h) to R5(i) do not depict the true state of affairs. The reply- affidavit reiterates the petitioner's stand already taken and proceeds to repudiate the contentions.

11. I have heard the submissions of Sri. T.Rajesh, counsel for the petitioner, Smt. Sudha Babu counsel for the 5th respondent and Sri.Babu Joseph Kuruvathazha standing counsel for the Pollution Control Board and Sri. Peeyus Kottam Counsel for the Panchayath. Mr. Rajesh making submissions of the basis of the pleadings and the documents placed on

record referred to section 236 of the Panchayath Raj Act and Section 21 of the AIR (Prevention and Control of Pollution) Act and also the relevant rules. Smt. Sudha Babu would refer to Section 236 (5) of the Panchayathraj Act and relied on the judgment of Justice M.Ramachandran Nair in **Rukhiya Beevi Vs. State of Kerala 2004(2) KLT 938** wherein the learned Judge referring to Section 21 of the AIR Act has opined that in appropriate cases even after the unit has become functional it is possible to entertain a request for consent. The question, the learned counsel submitted, is whether the industry or the process is discharging pollutants in excess of the prescribed standards

12. I have considered the rival submissions addressed before me in the light of the pleadings raised by the parties and the statutory provisions and decisions to which my attention was drawn by the counsel. The issue has been examined by the Tribunal for local self.-Government institutions at different stages of the legal battle which was triggered of, by a mass complaint . Ext.P1 submitted by some of the local residents on 16-7-2004. Ext.P13 order of the Tribunal {same as Ext.R5(g) } is the third order passed by the Tribunal in this case,. The question that arises for consideration is whether Ext.P13 warrants interference within the contours of this Court's power for judicial review under Article 226/227 of the Constitution. The said question according to me has to be answered in the

negative. The Tribunal has noticed all the relevant facts and has marshalled them correctly. Interalia the Tribunal noticed that upon expiry of the license which he was already holding for a period upto 31-3-1999, the 5th respondent has been conducting his metal crusher unit with a crushing capacity of 20 HP within the area of the 3rd respondent Panchayath and that he submitted an application for renewal of licence on 30-7-2004. Perhaps since by that time there was a mass appraisal against the operation of the crusher unit spearheaded by the petitioner and persons living near to the unit, for processing the application for license , the Panchayahth directed him to produce " No objection Certificate" from the Pollution Control Board. He did produce the consent to operate his metal crusher unit, granted to him by the Pollution Control Board on 23-2-2005 valid upto 31-12-2005. Nevertheless the Panchayath rejected the license application on the reason that the Pollution Control Board had issued consent without considering the existence of residential houses within the prohibitory distance. The Tribunal in the first round set aside the order dismissing the license application with a direction to take a fresh decision and the Panchayath reiterated its decision and rejected the license application on the very same reason. The Tribunal set aside that order with specific directions . Then again the Panchayath refused license to the 5th respondent saying that the 5th respondent had not provided the facilities

directed to be provided by the Pollution Control Boar, apart from pointing out five other deficiencies. The 5th respondent approached the Tribunal complaining that he had satisfied all the conditions subject to which the Pollution Control Board had issued to him consent to operate and that the deficiencies pointed out by the Panchayath in its decision dated 26-12-2005 are contrary to the actual situation. He applied for the issuance of a commission for local inspection and the Tribunal allowed that application and Commissioner submitted Ext C1 report . Significantly no objections were filed by the Panchayath to Ext.C1 report. The present writ petitioners, though they were very much aware of the pendency of the proceedings before the Tribunal preferred only to watch the proceedings before the Tribunal. The Tribunal noticed that under Ext.P6 consent to operate had been given by the Pollution Control Board on 23-2-2005 and that was valid upto 31-12-2005. The Tribunal also noticed Ext.P8 produced before the Tribunal which was the consent renewal order dated 15-2-2006 . Renewed consent had been incorporating an additional condition for renewal that the control measures mentioned under clause No. 4 of the consent renewal order shall be fully complied with within a period of four months from the date of the consent. The Tribunal noticed that the Pollution Control Board had given a direction to maintain the Pollution control facilities and that it was seen that the matters enlisted in Ext.P8 renewal

order were available at the time when further inspection was conducted by the Pollution Control Board on 1-2-2006 in connection with the consent renewal application. The Tribunal rightly inferred from condition No.10 in Ext.P8 that at least some of the control measures mentioned in condition No. 4 had already been arranged failing which the direction would not have been to ensure full compliance. The Tribunal found that decision No.1 dated 26-12-2005 of the Panchayath refusing licence to the appellant proceeds as though the facilities directed to be provided by the Pollution Control Board under condition No. 4 of Ext.P8 had not been provided at all and the Panchayath enlisted five additional deficiencies. It was rightly noticed by the Tribunal that these deficiencies had not been included by the Pollution Control Board, the expert body under condition No.4 in Ext.P8. The Tribunal According to me was correct in its assumption that the Pollution Control Board became inclined to renew the consent up to 31-10-2008 since they were satisfied about the facilities available at the 5th respondent's unit for controlling or containing pollution and time was given to the 5th respondent for providing additional facilities required. Ext.C1 Commissioner's Report stated that the other five deficiencies pointed out by the Panchayath. for justifying rejection were not in existence at the time of inspection by the Commissioner. It is after the survey of all the materials placed on record including Ext.C1 that the

Tribunal entered its findings that the Panchayath Committee was not justified in refusing license to the 5th respondent totally disregarding the 'No Objection Certificate' issued by the Pollution Control Board. The Tribunal rightly thought that in the third round of the litigation it will be unjust to relegate the 5th respondent once again to the Panchayath Committee. It was under such circumstances the the Tribunal issued specific directions to the panchayth to issue license to the 5th respondent within 30 days incorporating the specific condition for the satisfaction of condition No.10 in consent No. PCB/EKM/AC/R1/23/2006 dated 15-12-2006 of the Pollution Control Board and such other conditions if any, required for ensuring that the operation is not causing any sort of nuisance or pollution. It is not the Panchayath which has come forward with this writ petition itself but local residents. Having regard to the facts disclosed by pleadings and the various documents placed on record particularly in view of the stand taken by the Pollution Control Board in this court also, I do not think that the Panchayath will be justified in disobeying the direction inExt.P13 order of the Tribunal . The crusher unit undisputedly, is the only means of the livelihood of the 5th respondent. Mass upheavals by local residents cannot be permitted to interfere with the individual or citizen's right to carry on his avocations in accordance with the law of the land The Pollution Control Board is the expert body and sufficient safeguards have been insisted upon by them

while granting renewed consent to the 5th respondent. Under the impugned order, the Tribunal also has permitted the Panchayath to incorporate such other additional conditions as may be necessary on considerations of probable hazards to public health on account of pollutants generated by the petitioner's unit and the Tribunal has further stated in Ext.P13 that the direction to issue licence will not stand in the way of the Panchyath taking appropriate action under Section 233 (A) of the Panchayath Raj Act if the circumstances so warrant.

13. I confirm the order of the Tribunal and direct the Panchayath to issue license to the 5th respondent. The Environmental Engineer concerned of the Pollution control Board is directed to conduct fortnightly inspections of the 5th respondent's unit for a period of six months and thereafter to conduct monthly inspections. If it is noticed that any condition of the consent is violated by the fifth respondent appropriate directions should be given to him for immediate compliance If it is seen that such directions are not being obeyed, the Pollution Control Board is free to withdraw the consent under intimation to the Panchayath

The writ petition is dismissed subject to the above directions. No costs.

PIUS.C.KURIAKOSE,JUDGE

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